

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADJUSTACAM LLC,	§
	§
PLAINTIFF	§
	§
	§ Civil Action No. 6:10-cv-00329-LED
v.	§
	§ JURY TRIAL DEMANDED
AMAZON.COM, INC. <i>et al.</i> ,	§
	§
DEFENDANTS.	§

**NOTICE OF ADDITIONAL AUTHORITY REGARDING DEFENDANT DELL'S
CORRECTED MOTION TO DISMISS**

Defendant Dell Inc. ("Dell") notifies the Court of recently issued authority concerning Dell's Corrected Motion to Dismiss Plaintiff AdjustaCam LLC's ("AdjustaCam") allegations of indirect infringement and willful infringement in AdjustaCam's First Amended Complaint (Dkt. No. 164) ("Motion"). On September 10, 2010, Magistrate Judge Everingham in the United States District Court of the Eastern District of Texas issued his report and recommendation in *WebMap Technologies, LLC v. Google, Inc.* to dismiss WebMap's allegations of willfulness against Defendant Yahoo!. *WebMap Techs., LLC v. Google, Inc.*, No. 2:09-CV-343-DF-CE (E.D. Tex. Sept. 10, 2010) (attached as Ex. A). The plaintiff in *WebMap* did not allege pre-filing willful infringement and made no effort to stop the defendant's alleged continued willful infringement. *WebMap*, slip op. at 5. Under these facts, the magistrate judge found that the defendant was unfairly prejudiced by the "[p]laintiff's attempt to claim post-filing willful infringement without first seeking a preliminary injunction" and recommended that the plaintiff's claims for willful infringement be dismissed. *Id.* at 6.

The *WebMap* decision is relevant and new authority to Dell's Motion. AdjustaCam has only alleged post-filing willful infringement against Dell and has not sought a preliminary injunction to stop Dell's alleged continued willful infringement.

Date: September 13, 2010

Respectfully submitted,

/s/ Roger Fulghum

Scott F. Partridge
Lead Attorney
Texas State Bar No. 00786940
Roger Fulghum
Texas State Bar No. 00790724
BAKER BOTTS L.L.P.
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002-4995
Telephone: (713) 229-1569
Facsimile: (713) 229-7769
E-mail: scott.partridge@bakerbotts.com
E-mail: roger.fulghum@bakerbotts.com

Paula D. Heyman
Texas State Bar No. 24027075
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard
Suite 1500
Austin, Texas 78701-4078
Telephone: (512) 322-2555
Facsimile: (512) 322-3610
E-mail: paula.heymann@bakerbotts.com

ATTORNEYS FOR DEFENDANT DELL INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served via e-mail on all counsel who are deemed to have consented to electronic service on September 13, 2010. Local Rule CV-5(a)(3)(A).

/s/ Roger Fulghum _____

Roger Fulghum